Petition

81-1354

NO. _____

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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SUPREME COURT OF THE UNITED STATES

October Term, 1981

IRENE MUELLER,

Petitioner

vs.

SUPERIOR COURT OF CALIFORNIA, COUNT OF ORANGE
(California, Real Party in Interest)

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE

COURT OF APPEALS

OF THE

STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DISTRICT 1

IRENE MUELLER
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In Pro Per

QUESTIONS PRESENTED FOR REVIEW

1. Whether a criminal defendant in a state prosecution for misdemeanor assault and battery, and petty theft, was denied due process of law under the 14th Amendment when an investigatin policeman, acting as a state representative, willfully, negligiently or inadvertantly suppressed a business card containing at least the name of a material witness for the defense when such evidence was required by petitioner as in the meaning of Brady v. Maryland 373 U.S. 83, 87.

2. Whether evidence which might be helpful to a criminal defendant and which is suppressed by the police would result in a denial of due process as in Mooney v. Holohan 294 U.S. 103, 112.

3. Whether a criminal defendant is entitled to a dismissal of a criminal case is justified where the lost evidence is so vital to

the defendant of the case that a fair trial is impossible without; that the lack of such evidence deprives the defendant of her fundamental constitutional rights to a fair trial. State v. Heath 147 F.Supp. 877.

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OPINION BELOW

There was no official or unofficial report published by the California Court of Appeals.

JURISDICTION

The grounds upon which the jurisdiction of this Honorable Court is invoked are:

(i) The date that the judgment which is sought to be reviewed was entered in August 24, 1981.

(ii) The Supreme Court of California denies a petition for hearing on October 7, 1981, and all state remedies have been exhausted. (Exhibit"E".)

(iii) The statutory provision conferring jurisdiction on this Honorable Court is 28 U.S.C. 1257(3) which provides:

Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

...By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

UNITED STATES CONSTITUTIONAL AMENDMENTS INVOLVED

Fourteenth Amendment -

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,

or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE WITH FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

1. On January 25, 1979, Petitioner exited a J. C. Penney's store in Orange County, California, carrying cosmetic items from the store.

2. Petitioner was confronted by a security guard for the store, a Miss Carol Manstrom, and a scuffle ensued between the two women.

3. Thereafter, a man intervened and separated the two women. The man's identity was not discovered before trial, and it remained unknown at petitioner's hearing to dismiss charges.

4. The identity of the man remains unknown to this day and is the issue of this writ. Credible evidence (Exhibit "A", p. 3

and Exhibit "D", p. 3) shows that this unidentified man, referred to from now as witness "X", escorted petitioner back into the store; waited with petitioner until the police arrived; tried to ally petitioner's emotional distress in being arrested and assaulted by comforting her with assurances that everything would be all right.

5. Witness "X" having to return to his occupation, gave his business card to an arriving police officer who proceeded to give it to another officer. Witness "X" did not give a statement to the police but informed them that if they needed to ask him questions regarding this case, they could contact him.

6. The second police officer either willfully or negligently suppressed the card. Petitioner was unable to secure it from the police upon request.

THE MEANING AND CONSEQUENCES

OF THE SUPPRESSED CARD

7. At a dismissal hearing, on January 29, 1980, the Honorable Thompson ruled that Witness "X" was a material witness as to the assault and battery charges, but not as to the petty theft. She also ruled that the business card, which contained the name of the material witness, was valueless. (Order denying motion to dismiss: Exhibit "B".)

8. Judge Thompson ruled that since petitioner had been in the presence of Witness "X" for a duration of at least 20 minutes, petitioner should have had ample opportunity to ascertain the identity of the man. Even though petitioner had been placed under arrest and was suffering emotionally and physically from the anguish of being accused of a crime and being savagely beaten by a security guard. (Trial Testimony of Petitioner's Doctor: Exhibit "E".) (Exhibit "D" p. 2, 3.)

9. Since the hearing for dismissal, Police Officer Kenney has testified at petitioner's trial (Exhibit "C"); where he states that the business card contained not only the name of Witness "X", but also his address and phone number.

10. Since the business card was lost or destroyed by investigating officers, Petitioner was unable to secure Witness "X" as a possible favorable witness to her defense.

PETITIONER'S CONTENTION OF WITNESS "X's" MATERIALITY AS TO THE PETTY THEFT

11. Judge Thompson ruled, as stated above, that Witness "X" was not a material witness as to the petty theft charge. However, Petitioner unequivocally stated to the Honorable Judge Frank that Witness "X" was in her proximity when she placed the $20.00 down on the counter (Exhibit "D", p. 1.) There was no credible evidence produced by the prosecutor to refute petitioner's

assertion or to establish that the witness was not in the same areas as petitioner.

12. Officer Kenney testified at petitioner's trial that Witness "X" could have mentioned to him the possibility of observing other things. Therefore, creating a major inference that Witness "X" could have seen the petty theft incident.(Exhibit "C", p. 5).

ARGUMENT

I

WAS PETITIONER DENIED HER DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT BECAUSE OF THE FAILURE OF THE INVESTIGATING OFFICER TO PRESERVE THE BUSINESS CARD CONTAINING THE NAME AND ADDRESS OF A POSSIBLE FAVORABLE WITNESS.

Petitioner's defense rested on the testimony of Witness "X", who observed the assault and battery and quite possibly the petty theft. Petitioner testified that the

witness was extremely helpful towards her during the time after the abrupt encounter with the security guard (as stated in Exhibit "D", p. 3).

Petitioner has provided direct evidence to refute the findings of the Honorable Thompson as to the materiality of the business card to the defense. First, one can logically conclude that Witness "X" gave his card to the police officer because he wanted to be a witness; he wanted to inform the police as to his observation of the incidences.

Secondly, the Honorable Thompson was misinformed as to the fact that the card only contained the name of the witness. As Petitioner has shown already, Officer Kenney, who was the first person to receive the card from the witness, has testified that the business card did in fact contain not only the name, but also the address and phone number of the witness.

Further, Petitioner IRENE MUELLER, has testified that the Witness "X" was in her proximity when she placed the $20.00 on the counter; therefore, providing direct evidence that the witness was also material as to the petty theft charge (Exhibit "D", p. 1).

Consequently, since the Honorable Thompson in her order to dismiss found the witness material as to the assault and battery charges and petitioner has testified under oath that the witness was near her in the store, to which the prosecutor could not refute, a reasonable person could conclude that Witness "X" was material as to the petty theft.

In fact, not only was the witness material as to the petty theft, the business card that contained the name, address and phone number of the witness was, and is, material as to the defense. Without the business card, petitioner was unable to locate Witness "X" as a possible witness for

her defense; thereby, denying her a fair trial.

APPLICABLE LAW

I

The suppression by the prosecutor at the trial of evidence favorable to an accused violates due process where the evidence is material either as to guilt or punishment, irrespective of the good or bad faith of the prosecutor. Brady v. Maryland 373 U.S. 83, 10 L.ED2d 215, 83 S.Ct. 1194.

Negligent suppression of material evidence by the government entitles a defendant to a new trial. State v. Heath 147 F. Supp. 877:

> Heath decision stands for the principle that an outright dismissal of a criminal case is justified where the lost evidence is so vital to the defense of the case that a fair trial is impossible without it.
>
> In other words, in order for a defendant to be entitled to dismissal of a criminal charge on the basis of lost or destroyed evidence he must establish the critical nexus of materiality...

> materiality must be shown to the extent that the lack of such evidence deprives the defendant of his fundamental Constitutional rights to a fair trial.

In order for a conviction to be voided on account of suppression of evidence, it need not appear that the prosecuting attorney was privy; it is sufficient if the suppression is by investigating officers. Police are also part of the prosecution, and the taint on the trial is no less if they, rather than the state's attorney were guilty of the nondisclosure.

Failure of the police to reveal such material evidence in their possession is equally harmful to a defendant whether the information is purposely, or negligently, withheld. Barbee v. Warden 331 Fed.R. 846; Walker v. Bishop 235 F.Supp. 767; Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215; Napue v. Illinois 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217.

In United States v. Bryant 439 F.2d 642, 651, it was ruled that the government has a

duty to preserve evidence that is material. "Hence, we hold that before a request for discovery has been made, the duty of disclosure is operative as a duty of preservation. And if government is violative of that duty, it is a denial of that defendant's due process rights."

II

Under California law, it does not make any difference whether the material evidence that is suppressed is done so willfully, negligently, or inadvertently when it is done by a state agent representative if the suppressed evidence affects directly the question of guilt, the degree or amount of prejudice is not to be weighed or measured by the federal harmless error rule or Chapman v. California, 386 U.S. 18, 24, 17 L.Ed2d 705, 87 S.Ct. 824; if the suppressed evidence affects directly the question of guilt, the sole question is materiality, and if found

material, the judgment of conviction must be reversed.

In People v. Ruthford, 14 Cal. 3rd 399, 406, Chief Justice Wright, speaking for a unanimous Court, said:

> We note, preliminarily, that when the evidence is suppressed or otherwise made unavailable to the defense by conduct attributable to the State bears directly on the question of guilt our initial inquiry is whether such conduct resulted in denial of a fair trial. If so, the judgment of conviction must be reversed without weighing the degree of the prejudice to the accused. (Pyle v. Kansas 1942) 317 U.S. 213, 216 87 L.Ed 214, 216, 63 S.Ct. 177; In Re Imbler (1963) 60 Cal. 2d 554, 567 (35 Cal.Rptr. 293, 387 P.2d 6) wherein we stated: 'Moreover, suppression by the state of material evidence alone deprives a defendant of due process of law. It is necessary in such circumstances, of course, that the materiality of the evidence suppressed or otherwise not disclosed be examined in order that we may judge whether an accused has been fairly tried, but that examination is one which goes to the question of the evidence rather than prejudice to the accused.'
>
> We conclude that the suppression of substantial material evidence bearing on the credibility of a key prosecution witness is a denial of due process within the meaning of the Fourteenth Amendment. Chapman v. California (1967) 386 U.S. 18, 24 (17L.Ed 2d 705, 710-711, 87S.Ct. 824).

In the case at bar, investigating Officer Kenney was given a business card by Witness "X containing at least the name of a material witness to the incidences that arose between the petitioner and the security guard. Officer Kenney has stated at trial that the business card contained all the essential requirements to make the card material: name, address and phone number.

The card was given to the police officer and then mysteriously disappeared. Thereby, depriving petitioner of an essential part of her defense and also has denied her due process rights under the Fourteenth Amendment of the United States Constitution.

We pray that Certiorari be granted to resolve the serious constitutional issues presented herein.

Respectfully submitted,

IRENE MUELLER

In Pro Per

Appendix

APPENDIX A

PETITIONER'S SUPERIOR COURT OPENING BRIEF

APPENDIX A

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF ORANGE, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	)	Case No. AP-3258
	)	Muni Ct. No. 79CM00607
v.	)	APPELLANT'S OPENING BRIEF
IRENE DOROTHY MUELLER Defendant and Appellant	)	

STATEMENT OF THE CASE

Appellant was charged in Count I with a violation of Penal Code sections 484-488 (petty theft), in Count II with a violation of Penal Code section 240 (assault), and in Count III with a violation of Penal Code section 242 (battery).

On January 29, 1980, a motion to dismiss for failure to preserve evidence was heard by the Honorable Barbara Thompson of the Central Orange County Municipal Court. On January 31, 1980, Judge Thompson denied appellant's motion and made specific written findings, a copy of which is attached hereto as Exhibit "A" and incorporated by reference as though fully set

forth herein.

Jury trial in this matter was commenced on November 4, 1980, before the Honorable Karl C. Frank, Judge Presiding. On November 10, 1980, appellant was found guilty of all three counts as charged in the complaint. Notice of Appeal was timely filed on December 10, 1980.

STATEMENT OF FACTS

On January 25, 1979, appellant exited J. C. Penney's store in Orange County carrying cosmetic items from the store in her purse. A Penney's security agent, Carol Manstrom, followed appellant and attempted to detain her for shoplifting the items. Appellant struck and kicked Carol Manstrom, giving rise to charges of assault and battery. A scuffle ensued between the two women, until two men separated them. Although at the time of the hearing on appellant's motion to dismiss, the identity of either of the men was unknown, Carol manstrom managed with some effort to

locate one of the men, Michael Anderson, and he testified at trial. The other man dressed in a leisure suit, accompanied the two women back into the store. The appellant asserted that this unidentified man had been in her proximity when she allegedly shoplifted the items, and when she left a twenty-dollar bill on the counter for the cosmetic items.

Judge Thompson, however, found that credible evidence did not demonstrate a reasonable possibility that this man was a material witness to the petty theft charge (Exhibit "A", p. 1, ln. 15-17). On the other hand, Judge Thompson was satisfied that appellant demonstrated a reasonable possibility that this second man was a material witness to the assault and battery (Exhibit "A", p. 1, ln. 13-15).

This witness separated the two females and asked for identification of the security officer. He then convinced appellant that she should accompany him and the security officer

He then convinced appellant that she should accompany him and the security officer back into the store for further investigation. He accompanied the appellant to the security office, and was present in the security office from the time the appellant arrived there until just before the police arrived.

While at the security office in the store, before any police officer had arrived, appellant engaged in conversations with the man over a period of twenty minutes and learned that he had worked as a teacher in Pasadena. The man called his place of employment from the security office in the presence of the defendant, to explain that he would be late. As a result of that call, appellant learned that the man may work at St. Joseph's Hospital.

By the time a police officer arrived, the man had to leave, but he gave his business card to the officer and left without giving the officer a statement regarding what, if

anything, he had seen. Because his shift had ended, that officer waited for another officer to arrive to take over the investigation of the case. The first officer's best recollection is that he gave the second officer the business card when he arrived. The second officer does not remember receiving a business card. The man's card contained no phone number and no address. The man's name and address were not included in any police reports. The court found that the loss of the card was unintentional. He was never found or further identified.

ISSUES

I. WAS IT ERROR TO DENY DEFENDANT"S MOTION TO DISMISS ON DUE PROCESS GROUNDS BECAUSE OF THE FAILURE OF THE INVESTIGATING OFFICERS TO OBTAIN THE NAME AND ADDRESS OF AN INFORMANT WITNESS?

ARGUMENT

THE COURT ERRED IN ITS DENIAL OF

DEFENDANT'S MOTION TO DISMISS ON DUE PROCESS GROUNDS.

The analysis of this first issue must begin with the specific written findings of the court below in its "Order Denying Motion to Dismiss" (attached as Exhibit "A").

It should first be noted that the Suprem Court in People v. Hitch, 12 C.3d 641, set forth the governing principles concerning the loss or destruction of evidence by law enforce ment. The Court first adopted a standard for determining whether the evidence is sufficient important to require that it be preserved and made available to the defendant. The Hitch Court adopted a standard similar to that appli cable when a defendant seeks to discover the identity of a confidential informant. The Court held that evidence must be preserved and disclosed if "there is a reasonable possibilit that (it) would constitute favorable evidence on the issue of guilt or innocence (12 C.3d at p. 649, emphasis added).

The court below, in denying defendant's motion, made the following finding (Exhibit "A", page 1):

> The Defense has demonstrated a reasonable possibility that the man in a leisure suit (hereinafter referred to as "X") is a material witness to the assault and battery. Credible evidence, however, does not demonstrate that there is a reasonable possibility that X is a material witness to the petty theft charge.

The Court's finding as to the materiality of the witness to the petty theft charge was in error.

In Eleazer v. Superior Court (1970) 1 Cal.3d 847, the California Supreme Court held that due process imposed a duty upon the police or prosecuting authority to "make such inquiries and arrangements as are reasonably necessary to enable the prosecution and defense to locate (an informer who is a material

witness "whose testimony might conceivably be favorable to a defendant." (Emphasis added.)

In People v. Goss (1980) 109 C.A.3d 443 at page 455, ln. 7, the Court stated the following:

> A showing of materiality is accomplished where the appellant demonstrates a "reasonable possibility" the evidence would be favorable on the issue of guilt or innocence. (See Hitch, supra, 12 Cal.3d at p. 649; see also People v. Nation (1980) 26 Cal.3d 169, 176).

First, as to materiality, there was a reasonable possibility that the witness, "X", could have impeached the testimony of the prosecution's witness, Carol Manstrom, that defendant shoplifted the cosmetic items. Appellant testified at the hearing that "X" was in her proximity when she left a twenty dollar bill on the counter for the cosmetic items she allegedly shoplifted. The testimony of witness "X" would have therefore not only impeached the credibility of the prosecution's witness (cf.

People v. Ruthford (1975) 14 Cal.3d 399, 407-408), but also might have completely exonerated appellant.

Appellant's testimony establishes the witness' materiality (People v. Goss, supra, 109 C.A.3d 443, at page 455). In Goss, the court stated (at page 455):

> Appellant testified at the hearing on the Hitch motion that he never made the incriminating statements about Kenny's plan to commit a burglary, which the officer claimed appellant had made in both statements. Appellant's denial of these admissions established the tape's materiality (citation).

In the present case, witness "X" left his card, containing his name, with the investigating police officers but the card was lost or misplaced by the officer and neither the name or address of the witness was recorded. The witness' potentially favorable testimony was thereby lost to appellant for trial.

That the suppression or destruction of material evidence results in the denial of a fair trial on due process grounds was indicated by the Supreme Court in People v. Ruthford (1975) 14 C.3d 399, 407:

> As in the case of suppression of evidence which bears directly on the question of an accused's guilt, the suppression of material evidence bearing on the question of the credibility of the key witness for the prosecution has also been cast in language of denial of a fair trial. And in People v. Nation (1980) 26 C.3d 169, at page 176, the Court noted:
>
> As in Hitch, we are not in a position to examine the suppressed evidence to decide whether or not it it material. However, evidence lost to the defense because of its destruction by the authorities will be deemed material for the purpose of triggering the due process concerns of Hitch if

there is a reasonable possibility that it would be favorable to the defendant on the issue of guilt or innocence. (12 Cal.3d at p. 649).

The next question concerns the trial court's fourth finding of fact (Exhibit "A", p. 2) that the loss of the witness' card was unintentional thereby precluding the imposition of Hitch sanctions.

/////

That this finding and conclusion by the court is in error is demonstrated by the opinion of the Appellate Court in People v. Swearingen, 84 C.A.3d 570, where it rejected a contention that Hitch is inapplicable to negligent loss of evidence. The Swearingen court stated at page 574:

> The Attorney General argues that Hitch is applicable only when there has been an intentional destruction of evidence by the police and not negligent loss of evidence. The argument fails. . .(T)he Hitch rule

> exists to guarantee a defendant a fair trial through the preservation of evidence and not to punish police conduct. A fair trial is no less denied by negligent loss of evidence than it is by nonmalicious destruction. (Emphasis added.)

The court below was also of the opinion that the card was valueless because it apparently did not contain an address or telephone for the witness. Unlikely as it may see that the card simply had the man's name imprinted on it, nevertheless, the name alone of the witness would have been of immense value to the defendant. A name can be trached through the telephone directory, or the personnel records searched at St. Joseph's Hospital or the Pasadena School District. (See Engrossed Statement on Appeal, page 3, In. 12-18.) In short, a name is better than no name and is not valueless. There was a reasonable and distinct possibility that the witness could have been located for defendant's trial.

The court below further held that the defendant had ample opportunity to have obtained the name herself. This fact is irrelevant in light of these circumstances since it is not a case of the investigating officer's neglect to obtain the name of the witness but the failure to preserve the name of the witness once obtained. In People v. Hitch (1974) 12 Cal.3d 641, 650, the Supreme Court held that the obligation to disclose the existence of material evidence places on the state a correlative duty to preserve such evidence even without a request therefor, and directed that in the future law enforcement agencies take reasonable measures of the problem covered by Hitch, in that defendant here was not charged at the time the police obtained the name of the witness. If arequest were a condition to the duty to preserve, the duty might not arise until it became impossible of performance.

Lastly, the trial court's reliance on People v. Hernandez (1978) 84 C.A.3d 408 is

misplaced. Hernandez, at page 411, stated the following:

> Significant reasons compel the difference between the duty of maintenance of contact by the police with their informant, on the hand, and the limited duty with respect to an ordinary witness, on the other. The duty with respect to informants extends to those who act as police agents.

/////

Witness "X" in the present case was more than just a material witness. He was a percipient witness not only to the alleged shoplift but was also a material and percipient witness to the assault and battery charges who had witnessed the event and was involved in the incident. The witness had separated the two scuffling females, the security agent and defendant, and asked for the identification of the agent. He then convinced defendant that she should accompany himself and the

agent back into the store (Engrossed Statement on Appeal, p. 3, In. 3-11). It is interesting to note that the witness' conduct is significant in that he implied a willingness to be preserved as a witness, so to speak. Not only did he wait in the security office with defendant until the arrival of the police but he also provided the police officer with his name by way of his business card. He wanted to be a witness and the police agency by way of its loss of the business card deprived the defendant of her opportunity to obtain a fair trial.

CONCLUSION

What then is the appropriate sanction to be imposed for the failure to preserve the witness' name and what is the appropriate standard for review? In People v. Ruthford, supra, 14 C.3d 399, at page 408, it was stated:

> We conclude the suppression of substantial material evidence bearing on the credibility of a key

> prosecution witness is a denial of due process within the meaning of the Fourteenth Amendment. . .
>
> An accused, accordingly, is entitled to relief in such circumstances unless we can declare a belief that the denial "was harmless beyond a reasonable doubt." (citation)

As to the sanction to be imposed, Hitch notes that (12 C.3d at p. 654):

> (W)here material evidence which would be of potential value in the impeachment of a prosecution witness has been improperly lost or destroyed by the government, federal decisions have indicated that the appropriate sanction to be imposed is suppression of the witness' testimony. (Citations)

This principle was restated in Brown v. Municipal Court (1978) 86 C.A.3d 357, at page 363, as follows:

> Where potentially impeaching evidence on behalf of defendant is

suppressed (by law enforcement), due process does not require dismissal of the action, but only exclusion of the prosecution's evidence which might have been impeached by the evidence suppressed.

Since the unidentified witness was made unavailable by the police loss of his name and his testimony might have had impeachment value as to the security agent's testimony regarding the petty theft and the assault and bettery, the security agent should have been precluded from testifying (Ct. People v. Goss, supra, 109 C.A.3d 443,456).

DATED: April 9, 1981

Respectfully submitted,

GILES, STEWART & BARNETT

RICHARD L. KARCH
Attorney at Law

APPENDIX B

ORDER DENYING MOTION TO DISMISS

APPENDIX B

MUNICIPAL COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,	)	NO. 79CM00607
Plaintiff,	)	ORDER DENYING MOTION TO DISMISS
vs.	)	
IRENE DOROTHY MUELLER,	)	
Defendant.	)	

Defendant's motion to dismiss Counts I and II of the Complaint having come for hearing on January 28, 1980, before the Honorable Barbara Tam Thompson, E. Wallace Dingman, Deputy District Attorney, appearing on the behalf of the people, and Marv A. Stern appearing on behalf of Irene Dorothy Mueller.

The Court having considered oral argument, testimony, and the points and authority cited by the parties, the Court now makes the following findings:

The Defense has demonstrated a reasonable possibility that the man in a leisure suit (hereinafter referred to as "X") is a material witness to the assault and battery. Credible

evidence, however, does not demonstrate that there is a reasonable possibility that X is a material witness to the petty theft charge.

The standard in determining the People's responsibility for the absence of a material witness set forth in such cases as People vs. Hernandez (1978) 84 Cal.App. 3d 408; In re Jesus B. (1977) 75 Cal.App. 3d 444; and People vs. Flores (1976) 62 Cal.App. 3d Supp. 19 has not been satisfied. The Court bases this conclusion upon the following grounds:

First, Defendant had ample opportunity to discover X's name and address. Credible evidence demonstrates that Defendant was not prevented from conversing with X, and did engage in conversation with him for approximately 20 minutes.

Second, Defendant's mistaken belief that the police would obtain X's identity is not sufficient to excuse Defendant from the responsibility of safeguarding her own interests, or to cause the police officers to serve as defense investigators.

Third, credible evidence demonstrates that Defendant was able to determine that X was a teacher like herself, and that he had possibly taught in Pasadena. Credible evidence also shows the Defendant was able to listen to X's phone conversation with his place of employment and, as a result, was able to determine that he may work at St. Joseph's Hospital. Such ability indicates the Defendant was not suffering from such physical or mental distresss as to be unable to determine X's identity.

Fourth, credible evidence demonstrates that the loss of X's card by the police was unintentional and was not tainted with the degree of wrongdoing set forth in the above-cited cases. Credible evidence further demonstrates that X's card is valueless as it did not contain an address or telephone number for X.

Based on the foregoing reasons, the Court denies Defendant's motion to dismiss the petty

theft as well as the assault and battery charges.

Dated: January 31, 1980

Judge of the Central Municipal Court

APPENDIX C

TRIAL TESTIMONY OF OFFICER KENNY

MUNICIPAL COURT OF THE ORANGE COUNTY CENTRAL JUDICIAL DISTRICT

COUNTY OF ORANGE, STATE OF CALIFORNIA

DEPARTMENT NO. 313 HON. KARL C. FRANK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs IRENE DOROTHY MUELLER, Defendant.	)	No. 79C M00607

REPORTER'S TRANSCRIPT ON APPEAL

November 3, 4, 5, 6, 7, 10, 1980

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A Yes, sir, I did.

Q Who was that?

A The woman sitting at the end of table.

MR. POMEROY: Indicating the defendant, your Honor.

Q Did you observe any visible marks or bruises or any kind of visible evidence of any injury?

A No, sir, I did not.

Q For approximately how long were you there in the security office?

A Approximately 15 minutes

Q During that time did you have any conversation with the lady seated at the end of the counsel table?

A Not that I recall, sir.

Q During that time did she ever complain of any pain or injury or bruise or anything?

A No, sir.

Q Did she request any medical assistance?

A No, she did not.

Q Officer, was -- were there any men there in the security office?

A Not in the security office, no.

Q Did you see any men in that area?

A Just outside the security office.

Q And who was that, if you know?

A It was an elderly gentleman, I'd say maybe 55, 56 years old, to the best of my recollection.

Q Did you have any conversation with him?

A Briefly, yes, I did.

Q What was said in that conversation?

A To the best of my recollection, he said that he was outside in the mall area and he observed a fight between what was later to his knowledge a security guard and the woman sitting at the end of the table.

Q Did he say who had attacked whom?

A No, he did not.

Q Did he state any intention of what he wanted to do or anything like that, where

he wanted to go?

A He said that he was -- if there was any further questions he gave me his business card and with his telephone number on it, and I told him that another officer would be taking the report and would contact him.

Q Did he say where he was going?

A Just to work.

Q Did you ask him to leave?

A I believe I asked if he could leave and I said yes.

Q To your knowledge, did anybody tell him to leave?

A No, sir.

Q What did you do with that business card?

A I gave it to Officer Scott Staton.

Q And was Officer Staton there at that time?

A No, he was not.

Q So what did you do with the card until Officer Staton arrived?

A Clipped it to my pen on my shirt, uniform shirt.

Q During the time that you were there, was Officer Dave Dieball from Orange there?

A I don't recall seeing him there, no.

MR. POMEROY: Nothing further.

THE COURT: Mr. Olson.

CROSS-EXAMINATION

BY MR. OLSON:

Q Officer Kenney, you were the first officer to arrive on the scene?

A Yes, sir, I was.

Q And you made contact with a man who represented himself to be a witness?

A To the incident outside, what he told me about, yes, sir.

Q Where were you when you first ran into this gentleman?

A I believe it was just outside the security office.

Q Were you ever inside the security office with the man?

A Not that I recall, no, sir.

Q I will ask you to think very hard on that one. Were you inside the security office at any time with that gentleman?

A Not that I recall.

Q When you say "Not that I recall," do you mean no?

A Yes. I just can't recall being inside the office with him.

Q Well, would you recall if you had --

A If I --

MR. POMEROY: Objection.

THE WITNESS: If I would recall, yes.

MR. POMEROY: Objection. That calls for speculation.

THE COURT: Well, what was your answer again?

THE WITNESS: I didn't recall being -- seeing him inside the security office.

MR. OLSON: His answer just now was, "Yes, I would remember."

THE COURT: All right. Then the objection's overruled.

Q BY MR. OLSON: So then your answer is yes, I would remember.

Now, you do remember running into him outside of the security office. Is that correct?

A Yes, sir.

Q How far outside the security office? Was it in the store?

A It was in the package pickup area, which was --

Q Okay. And he was on his way out?

A He was standing there. I don't believe he was on his way out. He was just standing around.

Q Did he indicate that he was waiting for the police to arrive?

A He may have. I just recall talking to him about the incident.

Q But, in any case, he did give you his business card?

A Yes, sir, he did.

Q And said that he was a witness?

A To the incident outside, yes, sir.

Q Well, did he say he was a witness to the incident outside or just say he was a witness?

A He told me had had witnessed the fight ouside the store.

Q And nothing more?

A No.

Q And did you look at his business card?

A Yes, I did.

Q Do you recall what it said on his business card?

A The only thing that I can recall was that it had the word "doctor" in the front of his name.

Q Did it have an address?

A I believe it had an address somewhere in Irvine, to my recollection. I can't remember the street address or anything like that.

Q Did it have a phone number on it?

A I believe, yes, sir. Yes, it did.

Q Did you search Irene Mueller's purse

A No, I did not.

Q When you arrived did you notice item reportedly stolen on a desk?

A Yes, I did.

Q Did you conduct any search of Irene Mueller then?

taken her out. I don't know whether it was before or after the incident.

Q Were you aware of their relationship on the day of the incident?

A No.

Q Who was the second officer to arrive on the scene?

A Officer Staton.

Q Who called Officer Staton?

A Dispatch did. It was originally his call.

Q Originally his call?

A Yes, sir.

Q But you arrived first, and why is that?

A I was working day shift and it was the end of day shift and they asked that I respond out there, stand by until Staton, who was working swing shift, could come out.

Q What time does the day shift end?

A 3 o'clock.

Q This was about 2:30?

A I believe it was even later than that, because I was on my way into the station when I got the call.

Q What did you say you did with the business card of the gentleman?

A Clipped it to my shift.

Q Did you give it to Officer Staton when he arrived?

A Yes, I did.

Q Did you explain to him what it was?

A Yes, I did.

Q And what did you tell him?

A I told him that the man on the business card I had had witnessed a fight outside and that if there was any further questions he could give him a call.

Q You didn't write the report on that incident. Is that correct?

A That's correct.

Q If you had written the report would you have considered that name to have been important enough to go into the report?

MR. POMEROY: Objection; irrelevant.

THE COURT: Overruled.

THE WITNESS: I would think so, yes.

Q BY MR. OLSON: Did you have a conversation with Carol Manstrom upon arrival?

A Yes, I did.

Q And did she expalin her side of the story to you?

A Briefly, yes.

Q Did you have a conversation with Irene Mueller?

A Not that I recall, no, sir.

Q Did your conversation with Carol Manstrom take place inside the security office or outside?

A Usually when I respond to take the report I ask the security officer to step out-

side and tell me what had occurred, so I would imagine that's what I did.

Q Do you recall who else was in the room when you arrived, in the security room?

A I don't think so, no, sir.

Q Were you visible from inside the security office where you were standing?

A I may have been. I don't recall if I was or was not.

Q Why don't you resume the stand.

Have you ever testified before relating to these matters?

A Yes, sir, I have.

Q Was one of those days August 17th, 1979?

A I believe that was the date, yes, sir.

Q That was under oath?

A Yes, sir, it was.

Q Was your testimony any different on that day regarding the conversation with the mystery witness?

A Not that I recall, no, sir.

MR. OLSON: Can I approach the witness your honor?

THE COURT: Yes.

Q BY MR. OLSON: If I showed you a cop of your deposition, would that refresh your memory?

A Yes, sir.

Q I am referring to page 13 of your testimony, and the question was, "Did you observe any witnesses or did you leave the room to ascertain whether there were any witnesses at the time that you were investigating the alleged shoplifting and assault and battery at the J. C. Penney Company?"

Your answer was, "The only person that I can remember talking to was the gentleman that handed me the business card."

The next question was, "Do you remember the conversation?"

A "Not really, no."

Q Is there some reason that you now remember that he stated he was a witness to the incidents outside?

A No, sir.

Q You didn't remember the conversation on the 17th of August but is it now your testimony that you do remember some of the conversation?

A I remember right now maybe the crux of what he said.

Q Do you know Officer Staton?

A Yes, sir, I do.

Q Very well?

A With working with him, yes, sir.

Q Is he your partner?

A No, sir.

Q How about Officer Dieball?

A No, sir -- I do know Officer Dieball but he's never been my partner.

Q Are you on good terms with those two gentlemen?

A Yes, sir.

MR. OLSON: Nothing further, your Honor.

THE COURT: Anything further from the People?

responded back with a copy of it.

Q Did you make any changes?

A No, I didn't.

MR. OLSON: Nothing further, your Honor.

THE COURT: Mr. Pomeroy?

FURTHER REDIRECT EXAMINATION

BY MR. POMEROY:

Q Have numerous people told you that this gentleman may have been a witness to what happened outside?

A To the outside occurrence?

Q Yes.

A Yes.

Q Do you think that you might be assuming that he told you that he had witnessed something, just because so many people had told you that he might have?

MR. OLSON: Objection; calls for speculation.

THE COURT: Overruled.

THE WITNESS: As I think of the situation now as I sit up here on the stand, I feel comfortable with testifying that yes, he did say something about seeing a fight outside.

MR. POMEROY: Thank you. Nothing further.

FURTHER RECROSS-EXAMINATION

BY MR. OLSON:

Q You have testified you don't remember the entire conversation. Is that correct?

A Yes, sir.

Q Then he may have also witnessed other items?

THE COURT: He may have told you that he witnessed other items.

Q BY MR. OLSON: He may have told me that he witnessed other things?

A He may have.

MR. OLSON: Nothing further.

THE COURT: Mr. Pomeroy?

MR. POMEROY: Nothing Further.

THE COURT: May the witness be excused?

MR. POMEROY: Yes.

THE COURT: You are excused. Call you next witness.

MR. POMEROY: I don't know whether he is here right now, your Honor.

THE COURT: Let's take recess anyway. Ten-minute recess. Remember the admonition, don't discuss the facts, see you back in ten minutes, keep an open mind.

(Recess, reconvening in open court at 10:52 a.m.)

THE COURT: People versus Mueller.

MR. POMEROY: I will check and see if my witness is present, your Honor.

Your Honor, my witness apparently left from his home about a half-hour ago and said it would only take 15 minutes. I don't know if he has had car trouble or what. Here he is.

Call Officer Staton to the stand.

....

APPENDIX D

TRIAL TESTIMONY OF PETITIONER

THE COURT: Well, this has to do with the conversation with the mystery man and he would, in my opinion, be entitled to be present.

MR. OLSON: To hear the advance testimony of the defendant?

THE COURT: Well, right now it's touch and go as to what I am going to do, and I want to hear from her as to what she knows that the mystery individual would be able to testify to.

MR. POMEROY: It's my understanding that these statements cannot be used in evidence.

THE COURT: Cannot be used as evidence in the trial, yes. We don't know whether you intend to take the stand or be mentioned about this proceeding, the questions that nothing answers, and so forth like that, and that you do not use any leads you may obtain from this proceeding.

MR. OLSON: Mrs. Mueller, if I can extract from you in narrative fashion what essentially was the dentention room that he would probably testify to if he were here --

THE DEFENDANT: The mystery witness was beside me when I put the $20 beside the cash register. The mystery witness followed me outside. The mystery witness saw the assault, stopped the assault of Manstrom upon me. I asked the mystery witness to come in with me to be my one and only witness, and he assented and he came in and he sat there, and Manstrom took his address, telephone number, the place where he worked, but it did not appear in the final statement.

MR. OLSON: Well, was he told to leave by anyone?

THE DEFENDANT: Mr. Chatterton told him to leave.

MR. OLSON: And did he then leave?

THE DEFENDANT: Yes.

MR. OLSON: Did he leave his business card with anyone?

THE DEFENDANT: He left before any police officer arrived. He gave his card to the firs officer, which was Officer Staton, and Officer Staton -- rather, Officer -- let's see.

The first one, Kenney, said that he received the card from him, and this is his testimony.

MR. OLSON: In other words, they met as the officers were arriving?

THE DEFENDANT: That's right, and he decided he had better give it to an officer, so he gave it to him, and according to Officer Kenney he received a card from this witness.

THE COURT: Mr. Pomeroy, do you have any questions you would like to ask Mrs. Mueller?

MR. POMEROY: Yes. Mrs. Mueller, did this mystery witness make any statements with regard to what he had seen?

THE DEFENDANT: Yes. He told me he saw the entire thing.

MR. POMEROY: Did he say what he had seen happen?

THE DEFENDANT: Yes. He saw -- he said he saw me put the money down by the cash register, he also said he saw the attack of Manstrom upon me outside, and when I asked him to come

in he came into the interrogation room.

MR. POMEROY: Do you remember what he said with regard to what he saw of the attack?

THE DEFENDANT: Yes. First of all, that she took ahold of my arm, took ahold of my purse, she gave me a judo chop into the stomach, she tripped me, I fell to the sidewalk. He saw the entire thing.

MR. POMEROY: Did he say that he had seen each one of those things?

THE DEFENDANT: He said that he saw the entire thing, that I needn't be afraid, and he had ahold of my hand. I had ahold of his hand walking into Penney's interrogation room.

MR. POMEROY: Did he say that he had seen Miss Manstrom punch you?

THE DEFENDANT: He said that he saw Miss Manstrom's knee enter my stomach, he saw me fall to the floor, Miss Manstrom had tripped me, I fell to the sidewalk. I had a sprained ankle, I had a contusion on my head from falling to the sidewalk. He saw all of these

things.

MR. POMEROY: I am not asking you what you think that he saw. I am asking you what he said that he had seen.

THE DEFENDANT: He said that, he said he saw the entire thing, and when I asked him to come in with me he said he certainly would.

THE COURT: Well, you are not specifically answering what the blows were. There was a blow to the stomach with the knee?

THE DEFENDANT: Yes.

THE COURT: Then you indicated that as a result of the fall or whatever, the trip, there were some contusions of the forehead. Were there any other physical blows?

THE DEFENDANT: Yes. Against here.

THE COURT: A chop in the neck?

THE DEFENDANT: Chop in the neck, took hold of my scarf, took hold of my hair. She had ahold of my purse, she had ahold of my person.

THE COURT: You are showing she

grabbed you by the shoulder or coat or something like that?

THE DEFENDANT: That's right.

THE COURT: Right shoulder?

THE DEFENDANT: Grabbed hold of me by my shoulder.

THE COURT: Right shoulder?

THE DEFENDANT: Grabbed hold of my purse, broke the strap on my purse. She used her knee in here. There was blood in my mouth.

THE COURT: Did you actually see this mystery witness or the unknown witness in the vicinity when this was going on?

THE DEFENDANT: He was standing there.

THE COURT: And then he subsequently intervened and proceeded to stop --

THE DEFENDANT: He was the only one that broke it up.

THE COURT: Mr. Pomeroy?

MR. POMEROY: I have no more questions, your Honor.

THE COURT: You may go out in the

courtroom. Thank you for coming in.

THE DEFENDANT: Thank you.

(At this point the defendant left chambers.)

Mr. Chatterton's credibility as a witness.

(The following proceedings were held in chambers in the presence of the defendant.)

THE COURT: Mrs. Mueller, one thing I forgot to do earlier was to actually swear you. Would you stand and raise your right hand?

Do you solemnly swear that the testimony you give in the matter now pending before this court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: I swear to tell the truth.

THE COURT: Go ahead and be seated, then.

I asked you some questions, your attorney asked you some questions, and Mr Pomeroy asked you some questions a while ago. Was everything that you said in response to those questions true to the best of your

knowledge, information and belief?

THE DEFENDANT: It was absolutely true, sir.

IRENE DOROTHY MUELLER

called as a witness by the Court, having been sworn, testified as follows:

THE COURT: Now I have one more question I would like to ask. You indicated that the unknown witness gave his name, address, gave some information to the lady Carol.

THE DEFENDANT: That's right.

THE COURT: Were you present when this was going on?

THE DEFENDANT: Yes. I was sitting right beside him.

THE COURT: What questions did Carol Manstrom ask this gentleman?

THE DEFENDANT: She asked him his name, his address, his telephone number, and his place of employment.

THE COURT: This was done in your presence?

THE DEFENDANT: That's right, sir.

THE COURT: And did the other individual respond?

THE DEFENDANT: Yes.

THE COURT: What did he say? Do you recall what he gave by way of a name?

THE DEFENDANT: No, I really don't.

THE COURT: Do you recall what he gave in response to the questions about where he lived?

THE DEFENDANT: No. The only thing that I can remember is that he was a former teacher and he had taught in Pasadena and I had also taught in Pasadena, and so we had a bond there. I mean I knew that he was a teacher, but where and in what capacity or where he was, I really don't know.

THE COURT: Do you remember what he had to say with regard to where he was presently employed?

THE DEFENDANT: He called his place of employment from Penney's. He called on the telephone. He actually called and said he

was going to be late. So it had to be some-place close.

THE COURT: Do you remember what he told this Carol lady with regard to where he worked?

THE DEFENDANT: No, I really don't. I was under the impression, I mean, that it was a close place. It couldn't have been very far, that this must have been his lunch hour, and when I asked him what he was doing he wasn't in a teaching capacity at this time.

THE COURT: Can you set forth any reason or reasons why you don't recall anything about the interview of this gentleman?

THE DEFENDANT: I honestly thought that she was taking down all the information. She also had every one of my teacher's cards and she had all the information and she had typed every bit of that information. None of that information was on the file report, none.

THE COURT: When you testified before Judge Thomason of this court in January of

1979, not quite two years ago, were you given the opportunity to relate the facts that you have just related today?

THE DEFENDANT: No, I was not.

THE COURT: Did your attorney ask those questions?

THE DEFENDANT: No. All I was really able to say was yes or no.

THE COURT: Did your attorney ask you any of these questions?

THE DEFENDANT: No.

MR. OLSON: I believe that that may have been in a very early part of Mr. Stern's career. It may have been his first motion.

THE DEFENDANT: It was his first time in court.

THE COURT: All right. Mr. Pomeroy, do you have any questions you would like to ask?

MR. POMEROY: No.

THE COURT: Any questions you would like to ask, Mr. Olson?

MR. OLSON: What was your physical condition at that time, Mrs. Mueller?

THE DEFENDANT: My physical condition was really pretty bad and I had a sprained ankle - after I gout out of the mail at 3 o'clock in the morning my husband drove me to the doctor and I got treatment. I was let out 3 o'clock in the morning and I got treatment for the bruise on my head, for my sprained ankle, and for the bleeding, internal bleeding and everything, and I was in a semicoma for six months and under this doctor's care.

THE COURT: At the time when you were in the interview room were you suffering any emotional distress?

THE DEFENDANT: I was very distressed. I mean I was distressed.

THE COURT: You believe you were short of all your faculties at that point?

THE DEFENDANT: No, I knew what was going on.

THE COURT: Was your memory impaired

any at that time?

THE DEFENDANT: My memory was not impaired and whatever I said then I am saying now.

THE COURT: Anybody else have any questions they would like to ask? Mr. Pomeroy?

MR. POMEROY: No.

THE COURT: Mr. Olson?

MR. OLSON: Were you frightened at that time in the room?

THE DEFENDANT: Yes, I was. I had been attacked by an unknown attacker. She had no description, she had nothing to say that she was a security guard, she did not identify herself, she attacked me, she grabbed me, she grabbed my purse, and all I knew is someone was trying to attack me.

THE COURT: You can argue it, the two of you, but my thinking at this point is this: That you can argue, you can also, in the case of Mr. Pomeroy, put on evidence, but there is a prima facie case here which would be sufficient for me to let evidence in concerning the

fact that there was another witness, allow examination first, allow cross-examination first for the defendant, and then if the defendant takes the stand to testify on it that there was another witness, allow examination, cross-examination concerning the possibility of another witness, getting information, and allow the defendant to testify in the event she does take the stand.

And also with regard to the card, to allow cross-examination concerning that. This is just my thinking right now at this point.

Is there any evidence or argument or anything that you would like to put before the Court at this point, Mr. Pomeroy?

APPENDIX E

TRIAL TESTIMONY OF DR. PENNOCK

A I graduated Phi Beta Kappa from UCLA with a bachelor's degree. Attended UCLA Medical School. General internship, residency at UCLA three years. Thirteen years of education, and I was on the full-time teaching faculty of UCLA.

Q And as to your psychiatric background?

A I have a three-year residence at the Neuro-psychiatric Institute, was the head physician, Harbor UCLA In-patient Service.

Q And is Irene Mueller a patient of yours?

A Yes

Q Did you see Irene Mueller on the date 26 January 1979?

A Yes, I did.

Q What was the occasion you saw her for?

A I saw Mrs. Mueller on January 26th because she was having physical and emotional problems.

Q And who brought her to your office,

if you know?

A She drove to my office.

Q Was she by herself?

A Yes

Q And did she indicate any injuries to you at that time?

A Yes, she did.

Q And did you make a diagnosis of the injuries?

A Yes. I listed the injuries and made a diagnosis.

Q Did you write down on that day your diagnosis?

A Yes, I did.

Q Do you have it front of you now?

A Yes, I do.

Q What's the date on that document?

A January 26, 1979.

Q And does it have a reference title?

A I am sorry, I don't understand the questions.

Q Does it refer to any specific patient?

A Refers to Irene Mueller.

Q And could you describe, reffering to your report where necessary, what was your diagnosis of her injuries on that day?

MR. POMEROY: Objection; Irrelevant, your Honor. The testimony by the prosecution witnesses were that she had no visible injuries.

THE COURT: Overruled.

THE WITNESS: She had a list of injuries which I can explain in lay terms.

Q BY MR. OLSON: That's fine.

A She had a two-inch bump on the right side of her head, right parietal area of her head. She had a two-inch abrasion or scrape of the left pretibial, the left front part of the lower leg. She had a three-inch contusion, a bruise, over the left subpatellar or just under the kneecap of her left leg.

She had a four-inch linear contusion, just a small contusion, small bruise, over the right frontal part, anterior part of the right lower leg, front part.

She had a right sprained ankle. Those were the physical findings at that time.

THE COURT: Hold it. The objection made by Mr. Pomeroy, namely, that the only evidence so far was that the defendant, Mrs. Mueller, was not injured, is a valid objection. However, I will let the doctor testify because I assume that Mr. Olson will, as indicated in his opening statement, have Mrs. Mueller testify. But the doctor's entitled to give us information on what he saw and so forth like that. But as far as whether that was caused on the 25th at this store is another matter which is going to have be brought in later on.

Likewise, if the doctor testifies as to what Mrs. Mueller told him, that has to do primarily with diagnosis and is not to be considered by you as to the truth of whether it was true or not. It's not to be considered by you as to the truth of whether it was true or not. It's not to be considered by you. In other words, Mrs. Mueller or some-

body else is going to have to testify as to that.

Excuse me. Go ahead.

MR. OLSON: I would like to mention to the Court that additionally a number of the prosecution witnesses testified that they did not kick, scratch, punch or in any way assault or batter Mrs. Mueller.

THE COURT: You can argue that later. I discharged my duty. Go ahead.

THE WITNESS: Shall I continue?

MR. OLSON: Yes

THE COURT: Well, with another question go ahead. Had you completed the physical examination?

THE WITNESS: I completed the physical findings. Then there were some psychiatric findings.

THE COURT: Go ahead.

THE WITNESS: She was suffering from confusion, dizziness, anxiety, some disorientation as to time, and some fears.

MR. POMEROY: Your Honor, I will object to whatever psychological consequences Miss Mueller may have suffered from this incident as being totally irrelevant to this proceeding.

THE COURT: I am going to let him go ahead. Really, procedurally, perhaps, she should have testified first, but if she doesn't testify we are going to have to strike the testimony.

MR. OLSON: She will testify, your Honor.

THE COURT: Go ahead.

Q BY MR. OLSON: Do you want to continue on that line?

A She had some depression and had to be placed on some medication, some antidepressant medication and some medication to help her sleep at night. And the diagnosis essentially was multiple physical injuries, nothing that required anything except observation as far as the physical injuries were concerned.

But she did have posttramatic emotional reaction that required medication.

Q Did she explain to you how she had suffered the injuries?

A Yes, she did.

Q Waht did she say?

A She told me that the previous day she had been shopping at Penney's and upon leaving the store she said that she was violently attached by a person.

Q And did she indicate that any of those injuries arose in any other way?

A No.

Q And how long have you known Mrs. Mueller?

A I have known her since 1975.

Q How many times would you s you have seen Mrs. Mueller?

A I -- total number of visits I have -- let's see. Well, at least 57 visits.

Q 57 visits or more?

A Yes.

Q And have you been treating Mrs. Mueller for her emotional conditions and so forth?

A Yes, I have.

MR. POMEROY: Object as vague as to time

THE COURT: During what period of time have you been treating Mrs. Mueller for emotional problems?

THE WITNESS: Following the incident?

THE COURT: Before or after.

THE WITNESS: Before and after.

Q BY MR OLSON: Since 1975?

A Since 1977.

Q What did you say about 1975?

A That I knew her prior -- I have known her since

APPENDIX F

DENIAL, COURT OF APPEALS

MUNICIPAL COURT OF THE ORANGE COUNTY CENTRAL JUDICIAL DISTRICT

COUNTY OF ORANGE, STATE OF CALIFORNIA

DEPARTMENT NO. 313 HON. KARL C. FRANK, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs IRENE DOROTHY MUELLER, Defendant.	No. 79C M00607 REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I, William H. Burgess, Jr., Certified Shorthand Reporter for the State of California, License No. 63, do hereby certify that the foregoing pages 1 through 525, comprise a full, true, and correct transcript of the proceedings and testimony taken in the matter of the above-entirled cause on November 3, 4, 5, 6, 7 and 10, 1980.

Dated this 31st day of January, 1981.

William H. Burgess, Jr., CSR
Official Reporter

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

FOURTH DIST.

FILED

AUG 24 1981

ROBERT L. FORD, Clerk

Deputy Clerk

DIVISION TWO

IRENE D. HUELLER,

Petitioner,

v.

SUPERIOR COURT, ORANGE COUNTY,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Parties in Interest.

4 Civil 27171
COUNTY NO. AP-3258

THE COURT:

The petition for writ of prohibition/mandate is DENIED.

Morris, J.

Acting P.J.

C.C.
County Clerk, Orange County, 700 Civic Center Dr. West, Santa Ana 92701
James Vitek, 645 N. Eckhoff, Ste. J, Orange 92668
District Attorney, Orange County, 700 Civic Center Dr. West, Santa Ana 92701

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APPENDIX G

DENIAL, PETITIONER FOR HEARING

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CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order

In re: *No.*

vs.

Respectfully,

Clerk